IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 2019 / 2004

Single Bench

Petitioner : Wilson D'Souza S/o late F.D'Souza, Aged about 40 years, Counsellor Municipal Corporation, Durg-(C.G.) R/o Station Road, Near Bata Shop Durg-(C.G.)

Versus

Respondents : 1. State of Chhattisgarh Through The Secretary Urban Administration and Development, D.K.S.Bhawan, Raipur-(C.G.)

2. The Director Urban Planning and Development, State of Chhattisgarh, R.D.A. Building, Raipur-(C.G.)

3. Municipal Corporation Durg, Through its Commissioner, Municipal Corporation Durg-(C.G.)

4. Smt. Saroj Pandey, Mayor, Municipal Corporation Durg-(C.G.)

P. R. No. 9123/04 dated 20.7.04 Presented by Shri Bhanu Rao dated 19.7.04

Amendment in case carried out according to order dated 19.7.04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

H.F.R. (5E)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2019 OF 2004

Wilson D' Souza

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 6th AUGUST, 2004

Sd/-
L.C. Bhadoo
Judge

3rd .8.2004

(58)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2019 OF 2004

Wilson D' Souza

- Versus -

State of Chhattisgarh and others

Present: -

Mr. Pritinker Diwaker, Advocate:	For the petitioner.
Mr. Pramod Kumar Verma, Additional A.G.:	For the State/ respondents No.1 and 2.
Mr. Sanjay K. Agrawal, Advocate:	For respondent No.3.

O R D E R

(Passed on 6th August, 2004)

L.C. BHADOO, J.

1. By this writ petition, the petitioner, who is an elected Councillor of Municipal Corporation, Durg, has questioned the legality and propriety of show cause notices dated 8.7.2004 & 16.7.2004, Annexures P-1 & P-2 respectively.

2. Brief facts leading to filing of this writ petition are that the petitioner is an elected Councillor of Municipal Corporation, Durg. His case is that he is known for his devotion and sincerity towards the general public. Twice he was elected as Councillor being an independent candidate from the area where only 8 Christian voters are there. The petitioner was requested by the ruling congress party to support the congress and ultimately in the larger interest of public, he took a decision to join congress party. Looking to the performance of the petitioner and his activities soon he came in close contact with the then Chief Minister which unfortunately has not been liked by Mayor Kum. Saroj Pandey who is a B.J.P. candidate. The petitioner has attended almost every meeting of the council and in last ten years, it can be said that his attendance in the meeting was best

amongst all the Councillors. He has supported the great cause and work of the Corporation but has equally opposed by the Corporation and inactiveness of the Corporation as per the requirement. On account of this activeness of the petitioner, respondent No.4 Kum. Saroj Pandey does not like the petitioner and on many occasions she was threatening him to teach a lesson. It is being said openly by the Mayor that the petitioner would be subjected to some action by the department to ensure his removal and non-election in future. The petitioner was flabbergasted to receive a notice/order dated 16.7.2004 along with another notice dated 8.7.2004 asking him to submit his claim before the Director on 21.7.2004 as to why he cannot be removed from the post of Councillor under the provisions of Section 19 (1) (2) of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act'). In the show cause notice dated 8.7.2004 it has been mentioned that in the meeting dated 30th October, 2002, the conduct of the petitioner was not good and was against the Constitution as he put a gunny bag containing filth on the table of the Mayor and further that in the general meeting dated 18.5.2004 when the Mayor was reading the budget, the petitioner had threw certain papers and magazines. The conduct of the petitioner was against the decorum of the House and created obstruction in the meeting. The said notice is illegal, arbitrary and against law. For such act, till today, none of the Councillors of any Municipal Corporation, Municipality or Nagar Panchayat has been issued such a notice as has been done in the present case. The said notice has been issued at the behest of Mayor Kum. Saroj Pandey. The first allegation in the show cause notice has been levelled after two years of the incident and the said show cause notice does not meet the requirement of Section 19 of the Act. Therefore, the said show cause notices (Annexures P-1 & P-2) be quashed.

3. I have heard Mr. Pritinker Diwaker, counsel for the petitioner; Mr. Pramod Kumar Verma, Additional Advocate General for the State/ respondents No.1 & 2; and Mr. Sanjay K. Agrawal, counsel for respondent No.3.

4. Mr. P. Diwaker, learned counsel for the petitioner argued that as respondent No.4 is presently against the petitioner and she wants to remove the petitioner, therefore, the said notices are issued on her behest without valid reasons and the same does not meet the requirement of Section 19 of the Act. He further argued that the petitioner is an elected representative and in the Corporation meeting it is the general practice that the elected members always put forth their grievances and some times even high pitch of voice is also used and even during the course of discussions in order to attract the attention of the Chair some hot words are also exchanged being a public representative, therefore, the grounds as raised in the show cause notices does not meet the requirement of Section 19 of the Act.

5. On the other hand, learned counsel for the respondents opposed and argued that the conduct of the petitioner, which has been mentioned in the show cause notices, was not desirable in the interest of the public or the Corporation, as such the show cause notices were issued against which no writ petition is maintainable. The petitioner should first give reply of the show cause notices and if any action is taken, thereafter, he can approach the Court and in the second place, he has an alternative remedy to file an appeal as per the provisions of Section 19 (3) of the Act.

6. Having heard learned counsel for the parties, I have perused the record. Settled law on the point is that writ petition against show cause notice lies only when the authority is having no jurisdiction to issue such notice or show cause notice does not meet the requirement as envisaged under the particular Section under which it has been issued. In the matter of **The Special Director and another v. Mohd. Ghulam Ghouse and another** reported in **JT 2004 (1) SC 206**, the Hon'ble Apex Court held that

> "This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute

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want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court."

Similar view has been taken by the Madhya Pradesh High Court in the case of **M/s Procter & Gamble Home Products Ltd. v. Commissioner of Customs & Central Excise** reported in **2001 (I) MPJR 191**.

7. As far as the authority of the Director to issue show cause notice is concerned, it has not been challenged. The only point raised by the learned counsel for the petitioner is that the alleged show cause notices, Annexures P-1 & P-2, does not meet the requirement of Section 19 of the Act. Perusal of the show cause notice Annexure P-1 reveals that the first charge against the petitioner is that in the meeting dated 30th October, 2002, the petitioner placed a gunny bag containing filth on the table of the Mayor which created disturbance in the meeting and the said act of the petitioner was unconstitutional and against the decorum of the House. The second charge against the petitioner is that in the meeting of the House dated 18.5.2004 when the Mayor was reading the budget, the petitioner in a most undignified manner threw pamphlets and magazines in the meeting which created obstruction in the meeting and ultimately, it has been said that such unconstitutional and undignified conduct of the petitioner is against the constitutional decorum and the same is cognizable being against the law.

8. In this connection, if we look into the provisions of Section 19 of the Act, it lays down that the Director may, at any time, remove any councillor if his continuance as a councillor is not, in the opinion of the (Divisional Commissioner), desirable in the interests of the public or the Corporation. Specific allegations and charges have been levelled against the petitioner and at this stage, it cannot be

said that prima facie no charges are made out against the petitioner. Moreover, at this stage, it is not appropriate to express any opinion about the merits of the charges. Since show cause notices have been issued to the petitioner it is in the fitness of things that the petitioner being an elected representative respond to the show cause notice and whatever points raised by him in this writ petition he is within his right to raise all these points before the Director and the Director shall after giving opportunity of hearing to the petitioner look into the whole records and take decision and pass a considered order in accordance with law.

9. In the result, for the foregoing reasons, I am of the opinion that this writ petition against the show cause notices is not maintainable and the same is liable to be dismissed. Accordingly, the writ petition is dismissed in limine at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge
JUDGE
6th.8.2004

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